

REMARKS

By this Amendment the specification has been amended to better describe the invention, claims 1, 32 and 33 have been amended to address the examiner's formality rejections, and claims 42-52 have been added to alternatively define the invention. Entry is requested.

In the outstanding Office Action the examiner has rejected claims 1-5 and 9 (also obviously claims 32, 33 and 40) under 35 U.S.C. 103(a) as being unpatentable over Whalen et al.

The inventor asserts that this rejection is without merit. In this regard, the examiner is quite correct when he points out that Whalen does not disclose an exercise bicycle and an adjustable seat for supporting the weight of the person inside the housing.

However, the examiner is not correct in pointing out that the disclosure in Whalen (col. 6, lines 49 -56) of "*a treadmill, stair climber, or other exercise equipment being possibly placed within a chamber to provide inertial forces and eccentric-type training exercises*" would lead a person of ordinary skill in the art to providing an apparatus as claimed in independent claims 1, 32 and 33.

Rather, the reasoning of the examiner is based on improper hindsight as it includes knowledge gleaned only from the applicant's disclosure, from which he reconstructs the meaning of the passage cited in Whalen. Without such a hindsight knowledge, a person of ordinary skill in the art would never have interpreted the term "*exercise equipment*" in

Whalen to comprise work-out devices with a means to support body weight.

The teachings of Whalen are focused on a method and an apparatus to simulate hypergravity or hypogravity on the muscoskeletal parts of the body. For the teachings of Whalen it is indispensable that the person is standing and that the persons' body weight is supported by the legs or feet. If the body weight is not supported by the legs, both hypergravity and hypogravity cannot be simulated. Given this context, and excluding any knowledge of the present invention (which was unknown at the time of Whalen), a person of ordinary skill could only have interpreted "*exercise equipment*" as exercise equipment that is to be used while standing.

Thus, a person of ordinary skill in the art, having no knowledge of the present invention, would not have interpreted the expression "*treadmill, stair climber or other exercise equipment*" in Whalen as also comprising exercise equipment that has a seat for supporting the body weight.

Even if one follows the arguments of the examiner and assumes that a person of ordinary skill, on the priority date of the present invention, was aware of exercise equipment that can be used while the body weight is supported, the teachings of Whalen would lead a person of ordinary skill away from the use of such an equipment; its use would ruin all the effects on the body described in Whalen. Whalen aims to "*reproduce the functional interdependence of the cardiovascular and*

*muscoskeletal systems during normal daily activities on Earth"* (col. 6, lines 46-49) for space flight and *"to provide a high performance physical training to athletes and to study locomotion, cardiovascular physiology, and muscoskeletal adaptation to walking and running in hypergravity"* (col. 7, lines 11-14.) on Earth. The device of Whalen *"is used to either replace gravity in space or to augment the gravitational force (body weight) on Earth with a force created by negative chamber pressure"* (col. 7, lines 18-21).

The device according to the invention is not capable of simulating the effect of gravity on the muscoskeletal and cardiovascular systems. Quite the contrary, it aims to avoid the effects of the lower pressure on both the cardiovascular and the muscoskeletal systems. It uses the low pressure only for augmenting blood flow in the skin, not for loading the muscles. The cardiovascular and muscoskeletal training is done independently of the pressure within the chamber by using the work-out device.

The passage that has been cited by the examiner cannot establish that Whalen contains a teaching, suggestion or motivation to modify its teachings.

Consequently, the subject matter of claims 1, 32, and 33 is not obvious from Whalen, if one carefully avoids a retrospective view. And neither is the subject matter defined in claims 42-52.

Appln. No.: 09/818,999  
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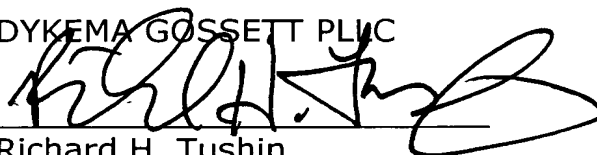
A withdrawal of the prior art rejection and allowance of the presented claims is requested.

The additional claims fee of \$600.00 (3 independent claims over 5 previously paid for) should be charged to Deposit Account No. 04-2223.

Respectfully submitted,

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